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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**
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13 CYNTHIA GARIBAY, an individual,
14 Plaintiff,
15 vs.
16 AMERICAN HOME MORTGAGE
17 CORP., a New York Corporation,
18 WELLS FARGO HOME MORTGAGE,
INC., a California Corporation & DOES 1
through 20,
Defendants.

CASE NO. 09cv1460-WQH-CAB
ORDER

19 HAYES, Judge:

20 The matter before the Court is the Motion to Dismiss Plaintiff's Second Amended
21 Complaint filed by Defendant Wells Fargo Home Mortgage, Inc. ("Wells Fargo"). (Doc. #
22 27).

23 **BACKGROUND**

24 On July 7, 2009, Plaintiff Cynthia Garibay initiated this action by filing a Complaint.
25 (Doc. # 1).

26 On October 29, 2009, Defendant American Home Mortgage Corp. ("American") filed
27 a "Suggestion of Bankruptcy" with this Court. (Doc. # 8). The Suggestion of Bankruptcy
28 notified the Court that on August 6, 2007, American filed a voluntary petition with the United

1 States Bankruptcy Court of the District of Delaware.

2 On November 13, 2009, the Court issued an Order staying this action as to Defendant
3 American only. (Doc. # 11).

4 On December 1, 2009, Plaintiff filed a First Amended Complaint. (Doc. # 14).

5 On March 26, 2010, the Court granted Wells Fargo's motion to dismiss the First
6 Amended Complaint. (Doc. # 20).

7 On July 9, 2010, Plaintiff filed a Second Amended Complaint. (Doc. # 26).

8 On July 26, 2010, Wells Fargo filed the Motion to Dismiss the Second Amended
9 Complaint. (Doc. # 27).

10 DISCUSSION

11 A district court may properly grant an unopposed motion pursuant to a local rule where
12 the local rule permits, but does not require, the granting of a motion for failure to respond. *See*
13 *Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995). Civil Local Rule 7.1 provides: "If an
14 opposing party fails to file the papers in the manner required by Civil Local Rule 7.1.e.2, that
15 failure may constitute a consent to the granting of a motion or other request for ruling by the
16 court." S.D. Cal. Civ. Local Rule 7.1(f)(3)(a). "Although there is ... a [public] policy favoring
17 disposition on the merits, it is the responsibility of the moving party to move towards that
18 disposition at a reasonable pace, and to refrain from dilatory and evasive tactics." *In re Eisen*,
19 31 F.3d 1447, 1454 (9th Cir. 1994) (affirming grant of motion to dismiss for failure to
20 prosecute); *see also Steel v. City of San Diego*, No. 09cv1743, 2009 WL 3715257, at *1 (S.D.
21 Cal., Nov. 5, 2009) (dismissing action pursuant to Local Rule 7.1 for plaintiff's failure to
22 respond to a motion to dismiss).

23 The docket reflects that Plaintiff, who is represented by counsel, was served with the
24 Motion to Dismiss the Second Amended Complaint. The Motion to Dismiss and the Court's
25 docket reflect that the hearing date of the Motion to Dismiss was August 30, 2010. Civil Local
26 Rule 7.1 provides: "each party opposing a motion ... must file that opposition ... with the clerk
27 ... not later than fourteen (14) calendar days prior to the noticed hearing." S.D. Cal. Civ. Local
28 Rule 7.1(e)(2). As of the date of this Order, Plaintiff has failed to file an opposition. The

1 Court concludes that “the public’s interest in expeditious resolution of litigation,” “the court’s
2 need to manage its docket,” and “the risk of prejudice to the defendants” weigh in favor of
3 granting the Motion to Dismiss for failure to file an opposition. *Ghazali*, 46 F.3d at 53.

4 CONCLUSION

5 IT IS HEREBY ORDERED that the Motion to Dismiss Plaintiff’s Second Amended
6 Complaint is GRANTED. (Doc. # 27). The Second Amended Complaint is DISMISSED
7 without prejudice as to Defendant Wells Fargo Home Mortgage, Inc.

8 IT IS FURTHER ORDERED that the Clerk of the Court shall administratively close
9 this case. This case shall be automatically reopened upon the dismissal of Defendant
10 American Home Mortgage Corp.’s bankruptcy petition or the filing of an order lifting the
11 bankruptcy stay. Defendant American Home Mortgage Corp. is ORDERED to notify the
12 Court in writing of any changes in the bankruptcy case relevant to this action, including but
13 not limited to a discharge or dismissal of the bankruptcy case. The Clerk of the Court shall
14 mail a copy of this Order to counsel for Defendant American Home Mortgage Corp., as listed
15 in the Suggestion of Bankruptcy. (Doc. # 8 at 2).

16 DATED: September 2, 2010

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18 **WILLIAM Q. HAYES**
19 United States District Judge
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